

**DEPARTMENT OF STATE REVENUE**

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LETTER OF FINDINGS NUMBER: 97-0416 MVE

Motor Vehicle Excise Tax

For The Period: December 31, 1994 - July 31, 1997

**NOTICE:** Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Motor Vehicle Excise Tax - Imposition**

**Authority:** IC 6-6-5-1; IC 6-6-5-2; IC 9-18-2-1; IC 9-13-2-78

Taxpayer protests the assessment of Motor Vehicle Excise Tax on a 1991 Buick.

**II. Tax Administration - Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer was assessed with the Motor Vehicle Excise Tax on her 1991 Buick automobile for the period beginning December 31, 1994 and ending April 15, 1997. Even though she was a resident of Connecticut, the taxpayer filed an Indiana Individual Full Year Resident Tax Return for 1995. The taxpayer states that she was unaware of the correct form because this was the first time she had ever filed an individual income tax return. The taxpayer has provided evidence that she paid out-of-state tuition to Purdue University, registered to vote in Connecticut, and also that the vehicle was insured, registered, and environmentally inspected in Connecticut. Additional facts will be provided below as necessary.

**I. Motor Vehicle Excise Tax - Imposition**

**DISCUSSION**

The Motor Vehicle Excise Tax is imposed upon vehicles in lieu of the ad valorem property tax levied for state and local purposes. IC 6-6-5-2 (a).

Indiana Code 6-6-5-1 (a) defines vehicle as:

(a) any vehicle subject to annual registration as a condition of its operation on the public highways pursuant to the motor vehicle registration laws of the state.

Further, Indiana law requires individuals to register all vehicles upon moving to the state. Indiana Code 9-18-2-1 states:

(a) Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person that:

- (1) are subject to the motor vehicle excise tax under IC 6-6-5; and
- (2) will be operated in Indiana.

(b) A person must produce evidence concerning the date on which the person became an Indiana resident.

Except as provided in subsection (d), an Indiana resident must register all motor vehicles operated in Indiana.

(d) An Indiana resident who has a legal residence in a state that is not contiguous to Indiana may operate a motor vehicle in Indiana for not more than sixty (60) days without registering the motor vehicle in Indiana.

The taxpayer was a resident of Connecticut and was attending Purdue University. Indiana Code 9-13-2-78 provides that an Indiana resident is one of the following:

(1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:

(A) Attending an institution of higher education.

(B) Serving on active duty in armed forces of the United States.

(2) A person who is living in Indiana if the person has no other legal residence.

(3) A person who is registered to vote in Indiana.

(4) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(5) A person who has more than one-half (½) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) derived from sources in Indiana using the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that

the person is not a resident under subdivisions (1) through (4).

As the facts indicate, the taxpayer qualified for the higher education exemption until her graduation in August of 1995. This fact is supported by documentation, which shows her to be paying out-of-state tuition, registered to vote in Connecticut, and also that the vehicle was insured, registered, and environmentally inspected in Connecticut. Following graduation the taxpayer remained in Indiana, married and became an Indiana resident by virtue of the fact that she resided in Indiana for more than one hundred eighty-three (183) days during the calendar year of 1996 and no longer met any of the exceptions provided in IC 9-13-2-78.

#### **FINDING**

The taxpayer's protest is partially sustained and partially denied. The taxpayer does not owe the motor vehicle excise tax for the assessment period of December 31, 1994 until December 31, 1995. However, the taxpayer does owe the tax for the period beginning January 1, 1996.

#### **II. Tax Administration - Penalty**

#### **DISCUSSION**

Taxpayer protests the imposition of the ten percent (10%) negligence penalty. The negligence penalty imposed under IC 6-8.1-10-2.1 may be waived by the Department where reasonable cause for the deficiency has been shown by the taxpayer. Specifically:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-2 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(e).

The taxpayer has not shown reasonable cause to waive the penalty imposed on the remaining assessment.

#### **FINDING**

The taxpayer's protest is denied. The ten percent (10%) negligence penalty will not be waived.